CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1945

No. ~~764~~ 36

HARICE LEROY CARTER, PETITIONER,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

PETITION FOR CERTIORARI FILED JANUARY 21, 1946.

CERTIORARI GRANTED MAY 6, 1946.

SUPREME COURT OF THE UNITED STATES

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No. 764

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[fols. 2-3] **IN SUPREME COURT OF ILLINOIS**

No. 28625

PEOPLE, STATE OF ILLINOIS, Defendant in Error,

vs.

H. LEROY CARTER, Plaintiff in Error

Error to Circuit Court Livingston County, 3536

ORDER GRANTING LEAVE TO PROCEED IN FORMA PAUPERIS—March 22, 1945

And now on this day the Court having considered the motion by plaintiff in error for leave to sue as a poor person, for writ of error and for leave to file typewritten copies of abstract and brief,

It is hereby ordered that leave be granted to file petition for writ of error as a poor person without the payment of costs. Petitioner ruled to file record, abstracts and briefs on or before twenty days before the first day of the next term. Leave to withdraw petition granted, if requested, before record is filed. Leave granted to file eight typewritten copies.

[fols. 4-5] IN SUPREME COURT OF ILLINOIS

[Title omitted]

ORDER ALLOWING MOTION TO CONTINUE—May 15, 1945

And now on this day the Court having considered the motion by plaintiff in error for leave to continue cause to the September 1945 Term of this Court,

It is hereby ordered that the motion by plaintiff in error to continue cause to the September Term 1945 be and the same is hereby allowed.

[fols. 6-7] And afterwards, on the 18th day of August, A. D. 1945, the same being one of the days in vacation after the Term of Court aforesaid, there was filed in the office

of the Clerk of the Supreme Court a certain abstract of record which is in the words and figures following, to-wit:

[fols. 8-14] IN THE SUPREME COURT OF ILLINOIS

[Title omitted]

MOTION FOR LEAVE TO FILE WRIT OF ERROR IN FORMA PAUPERIS ON THE SEPTEMBER TERM OF COURT, A. D. 1945

Comes now, Harice Leroy Carter, etc., Plaintiff in Error, Affiant herein, and moves the Court that leave be granted him, as a poor person, to file herein *Eight Typewritten Copies of Abstracts and Briefs, and Arguments,* for Writ of Error, together with an original Certified Copy of the Common Law Record; and a Certified Copy of the Transcript of the Testimony as taken in the above-entitled cause on hearing to determine the sentence to be given the said Defendant, Harice Leroy Carter, etc., on his plea of "Guilty."

For which he forever prays.

Respectfully submitted, Harice LeRoy Carter, Affiant.

[fol. 15] IN CIRCUIT COURT OF LIVINGSTON COUNTY

Indictment for Murder

Gen. No. 3536

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

HARICE LEROY CARTER, Commonly Known As Roy Carter, and LIVERA WORD

COMMON LAW RECORD

J. G. Whitson, Clerk.

INDICTMENT—Filed June 12, 1928

[fol. 16] STATE OF ILLINOIS,
Livingston County, ss:

Of the May Term of the Livingston County Circuit Court, in the year of our Lord One Thousand Nine Hundred and Twenty-eight.

The Grand Jurors, chosen, selected and sworn in and for the County of Livingston in the name and by the authority of the People of the State of Illinois, upon their oaths present that Harice Leroy Carter commonly known as Roy Carter, and Livera Word late of the County of Livingston and State of Illinois, on to wit: The thirty-first day of May in the year of our Lord One Thousand Nine Hundred and Twenty-eight at and in the said County of Livingston and State of Illinois aforesaid, with force of arms in and upon one James D. Churchill, in the peace of the People then and there being, unlawfully, feloniously, wilfully, and of malice aforethought, did make an assault and that the said Harice Leroy Carter, commonly known as Roy Carter, and Livera Word, a certain pistol then and there loaded and charged with gun powder and leaden bullets, then and there unlawfully, feloniously, wilfully and of their malice aforethought, did discharge and shoot off, at, to, toward, against and upon the said James D. Churchill, and that the said Harice Leroy Carter, commonly known as Roy Carter, and Livera Word, with leaden bullets aforesaid, out of the pistol aforesaid, then and there, by force of the gunpowder aforesaid, by the said Harice Leroy Carter commonly known as Roy Carter and Livera Word aforesaid, discharged and shot off as aforesaid, the said James D. Churchill, in and upon the body of him, the said James D. Churchill, then and there unlawfully, feloniously, wilfully and of their malice aforesaid thought, did strike, penetrate and wound; giving to the said James D. Churchill then and there with one of the leaden bullets aforesaid, a mortal wound of which said mortal wound the said James D. Churchill then and there instantly died. And so the Jurors aforesaid on their oaths aforesaid, do say that the said Harice Leroy Carter, commonly known as Roy Carter, and Livera Word, the said James D. Churchill, in manner and form aforesaid, then and there unlawfully, feloniously, wilfully and of their malice aforethought did kill and murder contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the same People of the State of Illinois.

[fol. 17] And the Grand Jurors aforesaid, chosen, selected and sworn in and for the County of Livingston aforesaid, in the name and by the authority of the People of the State of Illinois aforesaid, upon their oaths aforesaid, do further

present that Harice LeRoy Carter commonly known as Roy Carter, and Livera Word late if the County of Livingston and the State of Illinois, on the thirty-first day of May in the year of our Lord, One Thousand Nine Hundred and *Thirty*-eight, at and in the said County of Livingston and State of Illinois aforesaid, in and upon the body of one James D. Churchill in the Peace of the People of the said State of Illinois then and there being, unlawfully, feloniously, maliciously, wilfully and with malicious aforethought, did make an assault, and that the said Harice Leroy Carter, commonly known as Roy Carter, and Livera Word, a certain pistol, commonly called revolver, then and there charged with gunpowder and divers leaden bullets, which said pistol they the said Harice Leroy Carter, commonly known as Roy Carter, and Livera Word then and there had and held then and there unlawfully, feloniously, wilfully and of their malice aforethought, did discharge and shoot off, to, against, towards, and upon the said James D. Churchill and that the said Harice Leroy Carter, commonly known as Roy Carter, and Livera Word with one of the leaden bullets aforesaid, out of the pistol aforesaid, by the said Harice Leroy Carter, commonly known as Roy Carter, and Livera Word, discharged and shot off as aforesaid, then and there unlawfully, feloniously, wilfully and of their malice aforethought, did strike, penetrate and wound him the said James D. Churchill in and upon the body of him and chest of him the said James D. Churchill giving to him the said James D. Churchill then and there with one of the leaden bullets aforesaid, discharged and shot out of the pistol aforesaid, by the said Harice Leroy Carter, commonly known as Roy Carter, and Livera Word, in and upon the chest and body of him the said James D. Churchill, a mortal wound, of such mortal wound the said James D. Churchill, then and there instantly died. And so the Jurors aforesaid, upon their oaths aforesaid, do say that the said Harice Leroy Carter commonly known as Roy Carter, and Livera Word the said James D. Churchill in manner and form aforesaid then and there unlawfully, feloniously, wilfully and of their malice aforethought, did kill and murder contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the same people of the State of Illinois.

[fol. 18] And the Grand Jurors aforesaid, chosen, selected, sworn in and for the County of Livingston aforesaid, in the name and by the authority of the People of the State of Illinois aforesaid, upon their oaths aforesaid, do further present that said Harice Leroy Carter commonly known as Roy Carter late of the County of Livingston and State of Illinois, on the thirty-first day of May in the year of our Lord One Thousand and Nine Hundred and Twenty-eight, at and in the said County of Livingston and State of Illinois aforesaid, unlawfully, feloniously, wilfully and of his malice aforethought, made an assault upon James D. Churchill, a human being, in the Peace of the People then and there being, with a certain pistol loaded with gun powder and divers bullets (leaden) in the hands of him, the said Harice Leroy Carter commonly known as Roy Carter then and there held and did then and there unlawfully, wilfully, feloniously and of his malice aforethought, discharge said pistol loaded with gun powder and leaden bullets as aforesaid, at, toward, upon and against said James D. Churchill and did then and there in manner aforesaid inflict upon the body of James D. Churchill aforesaid, a mortal wound of which said mortal wound the said James D. Churchill then and there instantly died.

And the Grand Jurors aforesaid, chosen, selected and sworn in and for the County of Livingston aforesaid in the name and by the authority of the People of the State of Illinois aforesaid, upon their oaths aforesaid do further present that one Livera Word late of the County of Livingston and State of Illinois, then and there and at the time and place aforesaid, unlawfully, wilfully, feloniously and of her malice aforethought did then and there stand by and did then and there aid, abet and assist the said Harice Leroy Carter commonly known as Roy Carter in inflicting said mortal wound, whereof the said James D. Churchill then and there died as aforesaid.

And the Jurors aforesaid upon their oath aforesaid do say that said Harice Leroy Carter commonly known as Roy Carter, and Livera Word aforesaid, in manner and form as aforesaid, did then and there unlawfully, feloniously, wilfully and with malice aforethought, kill and murder said James D. Churchill contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the same People of the State of Illinois.

[fol. 19] And the Grand Jurors aforesaid, chosen, selected and sworn in and for the County of Livingston aforesaid, in the name and by the authority of the People of the State of Illinois aforesaid, upon their oaths aforesaid, do further present that said Harice Leroy Carter commonly known as Roy Carter late of the County of Livingston and the State of Illinois, on the thirty-first day of May in the year of our Lord One Thousand Nine Hundred and Twenty-eight, at and in the said County of Livingston and State of Illinois aforesaid, unlawfully, willfully and feloniously and of malice aforethought, made an assault upon James D. Churchill, a human being, in the peace of the people then and there being, with a certain pistol loaded with gun powder and divers leaden bullets in the hand of him, the said Harice Leroy Carter commonly known as Roy Carter then and there held and did then and there unlawfully, wilfully, feloniously and of his malice aforethought, discharge said pistol loaded with gun powder and leaden bullets as aforesaid, at, toward, upon and against said James D. Churchill and did then and there in the manner aforesaid inflict upon the body of James D. Churchill aforesaid, a mortal wound of which said mortal wound the said James D. Churchill then and there instantly died.

And the Grand Jurors aforesaid, selected and sworn as aforesaid, in the name and by the authority aforesaid, on their oaths aforesaid, further present that one Livera Word aforesaid at the said County of Livingston aforesaid in the State of Illinois before the said felony and murder was committed in manner and form and by means as aforesaid, to-wit: on the day thereof, did then and there feloniously, wilfully and unlawfully and of her malice aforethought incite, move, procure, aid, counsel and command the said Harice Leroy Carter commonly known as Roy Carter, the said felony and murder aforesaid, to do and commit, as aforesaid.

And the Jurors aforesaid upon their oaths aforesaid do say that said Harice Leroy Carter commonly known as Roy Carter, and Livera Word aforesaid, in manner and form as aforesaid, did then and there unlawfully, feloniously, wilfully and with malice aforethought, kill and murder said James D. Churchill, contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the same People of the State of Illinois.

[fol. 20] And the Grand Jurors aforesaid, chosen, selected and sworn in and for the County of Livingston aforesaid, in the name and by the authority of the People of the State of Illinois aforesaid, upon their oaths aforesaid, do further present that said Harice Leroy Carter commonly known as Roy Carter, and said Livera Word late of the County of Livingston and the State of Illinois, on the Thirty-first day of May in the year of our Lord One Thousand Nine Hundred and Twenty-eight, at and in the said County of Livingston and State of Illinois aforesaid, did then and there unlawfully and feloniously, with malice aforethought, by shooting, kill one James D. Churchill, a human being in the peace of the People.

And the jurors aforesaid upon their oaths aforesaid do say that said Harice Leroy Carter commonly known as Roy Carter, and Livera Word in manner and form as aforesaid, then and there unlawfully, feloniously, wilfully and with malice aforethought, did kill and murder said James D. Churchill, contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the same People of the State of Illinois.

And the Grand Jurors aforesaid, chosen, selected and sworn in and for the County of Livingston aforesaid, in the name and by the authority of the People of the State of Illinois aforesaid, upon their oaths aforesaid, do further present that said Harice Leroy Carter, commonly known as Roy Carter, and Livera Word late of the County of Livingston and the State of Illinois, on the thirty-first day of May in the year of our Lord, One Thousand Nine Hundred and Twenty-eight, at and in the said County of Livingston and State of Illinois aforesaid, did unlawfully, and with malice aforethought, by shooting, kill James D. Churchill.

And the Grand Jurors aforesaid upon their oaths aforesaid do say that said Harice Leroy Carter commonly known as Roy Carter, and Livera Word in manner and form as aforesaid, then and there unlawfully, feloniously, wilfully and of their malice aforethought, the said James D. Churchill, did kill and murder contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the same People of the State of Illinois.

Neil Kerr, State's Attorney in and for the County of Livingston and State of Illinois.

On the back of which said Indictment appears the following indorsements: No. 3536, Livingston County Circuit Court, May Term, A. D. 1928. The People of the State of Illinois vs. Harice Leroy Carter commonly known as Roy Carter, and Livera Word. Indictment for Murder. A true Bill. W. D. Spence, Foreman of the Grand Jury. Witnesses: James Golf, Chester Herndon, L. R. Gagnon, L. M. Shugart. Filed June 12, 1928. J. G. Whitson, Clerk.

[fol. 21] In Circuit Court of Livingston County

Present: Hon. Stevens R. Baker, Judge and others as before. Attest: James G. Whitson, Clerk.

The People of the State of Illinois

vs.

Harice Leroy Carter, Commonly Known as Roy Carter

Indictment for Murder No. 3536

Judgment on Plea of Guilty etc.—June 15, 1928

This day come the said People by Neil Kerr State's Attorney in and for Livingston County and State of Illinois and also comes the Defendant Harice Leroy Carter commonly known as Roy Carter in his own proper person into Open Court.

And the said Defendant Harice Leroy Carter commonly known as Roy Carter is here and now by the clerk of this Court furnished with a true copy of the indictment herein with the names of the People's witnesses thereon together with a list of the petit jurors for the present term of this Court.

And the said defendant Harice Leroy Carter commonly known as Roy Carter having been duly arraigned and being called upon to plead expresses a desire to plead guilty to the crime of murder as charged in the indictment. Thereupon the Court fully explained to the Defendant Harice Leroy Carter commonly known as Roy Carter the consequence of such plea and of all his rights in the premises including the right to have a lawyer appointed by the Court to defend him and also of his right to a trial before a jury of twelve jurors sworn in open Court and of the degree of

proof that would be required to justify a verdict of guilty against him under the plea of not guilty but the defendant Harice Leroy Carter commonly known as Roy Carter persists in his desire to plead guilty and for a plea says he is guilty in manner and form as charged in the indictment.

It is therefore considered, ordered and adjudged by the Court that the defendant Harice Leroy Carter commonly known as Roy Carter stands convicted of the crime of murder charged in the indictment under his plea of guilty entered of record in this cause.

And now this cause coming on further hearing the Court appoints L. W. Tuesburg a duly licensed and practicing attorney and a member of the bar of this Court to represent the said defendant Harice Leroy Carter commonly known as Roy Carter on question of mi*g*itation or aggravation of said crime of murder to which said defendant has pleaded guilty and which said question of mi*g*itation or aggravation of said crime of murder is hereby set down for hearing before the Court on *Mo*June 18th A. D. 1928 at nine thirty o'clock in the morning.

[fol. 22] In Circuit Court of Livingston County

[Title omitted]

Minute Entry—June 18, 1928

This day comes the said People by Neil Kerr State's Attorney in and for Livingston County and State of Illinois into Open Court. And comes also the Defendant Harice Leroy Carter commonly known as Roy Carter in his own proper person and by L. W. Tuesburg his attorney, appointed by the Court to represent the said Defendant on question of mi*g*itation or aggravation of said offense, into Open Court.

This cause having been on the 15th day of June A. D. 1928 set d*w*on for hearing before the Court on this day on the question of mi*g*itation or aggravation of the offense on a plea of guilty of the Defendant Harice Leroy Carter commonly known as Roy Carter heretofore entered of record herein and the Court having heard all the evidence adduced by the said People as well as that adduced by*t* the said Defendant and having heard the arguments of counsel for both

parties and not being fully advised in the premises takes said matter of mitigation or aggravation of the said offense under advisement.

[fol. 23] In Circuit Court of Livingston County

[Title omitted]

Sentence—June 29, 1928

Now on this 29th day of June A. D. 1928 come the said People by Neil Kerr, State's Attorney in and for Livingston County and State of Illinois into open Court. And comes also the defendant Harice Leroy Carter commonly known as Roy Carter in his own proper person into open Court.

And the said defendant Harice Leroy Carter commonly known as Roy Carter having been on June 15th A. D. 1928 being one of the regular days of this term of this Court furnished with a true copy of the Indictment herein with the names of the People's witnesses thereon together with a list of the petit jurors for the present term of this Court, waived arraignment and expressed a desire to plead guilty to the crime of murder as charged in the indictment and having been on said date of June 15th last aforesaid fully advised by the Court of the consequences of entering a plea of guilty of murder and of all his right- in the premises including his right to have a lawyer appointed by the Court to defend him and also of his right to a trial before a jury of twelve jurors sworn in open Court and of the degree of proof that would be required to justify a verdict of guilty of murder against him under a plea of not guilty but the said defendant Harice Leroy Carter commonly known as Roy Carter persisted in his desire to plead guilty and for a plea the said defendant Harice Leroy Carter commonly known as Roy Carter entered a plea of guilty to the crime of murder in manner and form as charged in the Indictment. And it was thereupon considered, ordered and adjudged by the Court that the said defendant Harice Leroy Carter commonly known as Roy Carter stand convicted of the crime of murder under his plea of guilty of murder as charged in the indictment then entered of record in said cause.

And this cause coming on further to be heard before the Court on question of mi*gi*tation or aggravation of said offense the Court appointed L. W. Tuesburg a legally licensed and practicing attorney and member of the bar of this Court to represent the said defendant Harice Leroy Carter commonly known as Roy Carter on question of mi*gi*tation or aggravation of said crime of murder to which the said defendant pleaded guilty and which said question of mi*gi*tation or aggravation of said crime of murder was set down for hearing before the Court on Monday June 18th A. D. 1928 at nine-thirty o'clock in the forenoon.

And the said cause having again and on the 18th day of June A. D. 1928 being one of the regular days of said term of said Court come on for hearing before the Court on question of mi*gi*tation or aggravation of said crime of murder the said People by Neil Kerr State's Attorney for said Livingston County being present in open Court and the defendant Harice Leroy Carter commonly known as Roy Carter also being present in open Court in his own proper person and by his attorney L. W. Tuesburg so as aforesaid appointed by the Court to represent said defendant on said question of mi*gi*tation or aggravation of said crime of murder.

And the Court having heard all the evidence adduced by the said People as well as that adduced by the said defendant and having heard the arguments of counsel for both parties and not being fully advised in the premises took said matter of mi*gi*tation or aggravation of said offense under advisement.

And now on this 29th day of June A. D. 1928 the same being another of the regular days of this term of this Court come the said People by Neil Kerr State's Attorney in and for said Livingston County into open Court. And also comes the defendant Harice Leroy Carter commonly known as Roy Carter in his own proper person into open Court.

And the Court having heretofore and on the 18th day of June A. D. 1928 heard all the evidence adduced in open Court on the question of mi*gi*tation or aggravation of said crime of murder and being now fully advised of the premises after due consideration the said defendant Harice Leroy Carter commonly known as Roy Carter having been heretofore adjudged guilty of the crime of murder of one James D. Churchill on his plea of guilty heretofore entered of record herein.

It is further considered, ordered and adjudged by the Court that the said defendant Harice Leroy Carter commonly known as Roy Carter whose age the Court finds to be thirty-two years be taken from the bar of this Court to the Common Jail of Livingston County from whence he came and from thence by the Sheriff of said Livingston [fol. 24] County, to the penitentiary of this State at Statesville, Illinois and be delivered to the Warden or Keeper of said penitentiary, and the said Warden or Keeper is hereby required and commanded to take the body of said defendant Harice Leroy Carter commonly known as Roy Carter and confine him in said penitentiary in safe and secure custody from and after the delivery hereof for the term of ninety-nine years which is the sentence of the Court.

[fol. 25] STATE OF ILLINOIS,
Livingston County, ss:

I, H. D. Wolff, Clerk of the Circuit Court and ex-office Recorder, in and for said County and State, and keeper of the records, seal and files thereof, do hereby certify the annexed and foregoing to be a true and literal copy of Indictment filed in said Court on June 12, 1928;

Of certain proceedings had and entered of record in said Court on June 15th, 1928, In relation to the defendant Harice Leroy Carter, etc., Of certain proceedings had and entered of record in said Court on June 13th, 1928, In relation to the defendant Harice Leroy Carter, etc., Of certain proceedings had and entered of record in said Court on June 29th, 1928, In relation to defendant Harice Leroy Carter, etc. All in a certain case lately pending in said Court on the criminal side thereof numbered 3536 wherein the People of the State of Illinois are Plaintiffs and Harice Leroy Carter, commonly known as Roy Carter, defendant,

as the same appears from records and files now in my office remaining.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at my office in Pontiac, Illinois, this 29th day of August A. D. 1944.

H. D. Wolff, Clerk.

[fol. 26] INFORMATION TO BOARD OF MANAGERS, ILLINOIS STATE PENITENTIARY

STATE OF ILLINOIS,
Livingston County, ss:

PEOPLE OF THE STATE OF ILLINOIS

vs.

HARICE LEROY CARTER, Commonly Known as Roy Carter

INDICTMENT FOR MURDER

#3536

1. Name in Full: Harice Leroy Carter, commonly known as Roy Carter.

2. Alias, If Any: None.

Age: (3) Thirty. Born June 8[illegible], 1898.

4. Occupation: Chauffeur, Mechanic, Cook.

5. Education: No Schooling. Can Read and Write.

6. Mentality: Average.

7. Disposition: Quiet.

8. Prisoner's Associates and Character in the Community: Defendant has been in Livingston County for the past three years and nev-r been in trouble before while here. His previous associates and habits are unknown.

9. Industrious or Idle: Industrious. Worked eight years for the Industrial Track Construction Co., St. Louis, Missouri. Last three years at Ballard and Johnson's Restaurant, Forrest.

10. Previous Record, If Any: None Known.

COMPLETE STATEMENT OF PRESENT ARREST & CONVICTION

The written opinion of the Trial Judge in passing upon the sentence of Carter is herewith submitted verbatim:

After imposition os sentence, Carter turned State's evidence and testified ag-inst Livera Word, jointly indicted with him, as an accessory. Yesterday the Jury found the Defendant Livera Word guilty of Murder and fixed her punishment at Twenty Years Imprisonment.

11. Recommendation, If Any: None except to call attention to the fact that Carter turned State's evidence as above set forth.

(Signed) Neil Kerr, State's Attorney.

I concur in the foregoing.

(Signed) Steven R. Baker, Presiding Judge.

[fol. 27] IN THE SUPREME COURT OF ILLINOIS

[Title omitted]

ABSTRACT OF TESTIMONY AT HEARING ON QUESTION OF MITIGATION OR AGGRAVATION—June 18, 1928

JAMES GOFF, being first duly sworn, testified as follows:

Direct examination.

By Mr. Kerr:

Mr. Goff states (Absts. 1-8) that his home is in Kentucky, Campbellsville; that he came to Illinois, April 27th, 1928; that he was employed by one C. E. Morrison, Route 5, Pontiac, Illinois, on the 31st day of May, in the year last aforesaid; that he is a farmer.

That on the 31st day of May, he was hauling gravel for one Seymour Norris; that he was getting the gravel from Churchill pit, which was located North of the Fairbury road —a distance of about four miles. That he was hauling the gravel on the McDowell road, two and one-half miles East of McDowell; that the gravel pit is on the (East and West) road; that he came to an intersection and turned North, and that the "Domas Bridge" is about one and one-half miles from the pit.

That he knows James D. Churchill. That on the 31st day of May, last, he and James D. Churchill were hauling gravel [fol. 28] together. That they were driving separate teams on the afternoon of May 31, 1928; and that after they came to the aforesaid intersection of the Fairbury Road (the road running East and West) aforesaid, to the Churchill Gravel Pit, aforesaid, he turned Nort- about four miles. That he was taking it at the aforesaid McDowell Road. That iw was a four or five mile haul. That he was hauling gravel on

the (morning) of the 31st day of May; that he had occasion to see an automobile with colored people in it; that they pulled up (behind) him before he had gotten to the Demoss Bridge. That there was two roads. One was a bad road, and the other was a beaten track. That the latter, was he supposed, on the West side—or the left side of the road. That he was driving his team on the left side of the road, and had been driving on that side all of that day.

That at the time he met the negroes they passed him—in a blue Chevrolet four-door sedan. And that there were four women and this man (presumably the defendant, Harice Leroy Carter) in the car. That, this morning, they drew up behind him and blew the horn for him to pull out; that he turned around and motioned for them to go around; that he (Carter) cursed him when he passed; that the women also cursed him. That he again, that same day, saw those same colored people; that they drove North over the bridge, and came back on the South side, and parked. I drove on down, they got out of their car. I heard loud talking behind the wagon. I was perhaps a rod ahead of them but I could hear them. I drove on; didn't pay any attention to them. "I did not get out of the wagon," he said. That he saw them again that day after • • • "I had left the gravel pit at six minutes before four o'clock, and I guess I was ten minutes on the road." That Churchill was hauling gravel that afternoon • • • "He was behind me • • • about two or three rods • • • He was there at the gravel pit when I loaded up, but I loaded first [fol. 29] and got started." That when he seen those colored people that afternoon • • • he and Churchill was "at the turn of the road two rods from the gravel pit, maybe four rod- in the turn of the road." That he was on the North and South road, South of the Demoss Bridge, and we were going North and they were coming South. That I was on the front wagon. That I saw them coming and they pulled right into my team • • • I didn't have time to pull out • • • This man said "Why in hell don't you pull over here?" This (niggerman), he says: "Why in hell don't you pull out?" and I says: "Well, the rest of the folks go round. Why don't you?" He says: "You are on the wrong side of the road." I said: "The rest of the folks go round me," and he pulled right into my off horse and the horse jumped." He said: "God damn you, get over and stay over," and the women cursed me too, and they went

on. I looked back and saw them take Churchill the same way. That "He stopped Churchill, and I got off my wagon and started back. * * * Churchill got off and argued with them. They cursed him. The women did; I didn't hear this fellow." That he heard "loud talking". That Churchill looked around to see if there was any license on the car. There was not. He gets on his wagon and pulled around him, and as he passed Churchill got a handful of gravel off his load and threw it on the car. That, "They stopped the automobile and got out, the three women, Livera Word, and the other two women, and I heard them call Churchill 'a yellow son of a bitch' and a god-damned white son of a bitch.' That I didn't hear Churchill swear. That he and Churchill proceeded on with their loads.

That this witness saw this colored man in the automobile again that afternoon, when he and Churchill were driving North, (twenty (20) minutes later) and when there was an automobile pulled up behind them. That it was presumably the same one. That a (nigger-man) and woman were in it. The man driving "This man here."

Asked by Mr. Kerr to tell in his own words what happened: this witness said: "The nigger says 'I blew my horn'; and he says: 'What did you mean by throwing gravel on my automobile?' Churchill says: 'I meant just what I did.' So the nigger says: 'Get off.' and Churchill got off. I got on my wagon. The front fenders was up past the rear wheels on Churchill's wagon. That Churchill was in the West track. He asked Churchill to get off the wagon, and he got off. The nigger slid out from under the wheel, stepped sideways. (Indicating) and commenced firing."

That three or four shots were fired, and one at him. That all he said was: "You too." That when the defendant, Carter, fired at Churchill, "he just stood there till he hit him, then he went down. That he was standing "in this position" (Indicating) and fell down and said: "O, Lord!" * * * That Churchill fell four foot off his wagon * * * in the middle of the road. That the gun was a blue-steel one, with a hammer on it. "Looked to be a .32 or a .38 with a 5-inch barrel—a pistol type." That he saw the defendant when he got out of the automobile; that he saw where he got the gun from. That he got it from his hip; back here. (Indicating) That he doesn't know whether he got it from a holster or not. That there was no further conversation

between the defendant and Mr. Churchill before the shooting started. That after the shooting—"I ran across the road and got in the timber and got away. Called the sheriff." That the colored people got in their car and went back toward Fairburg. That about three minutes later he came back there, found the body in the road. That the body was [fol. 30] still lying about the middle of the wagon, might have been a little to the North of the center of the wagon. That the team was in the same place. That Norris came up just as he got there, and Herndon. That he, Herndon and Norris got there approximately at the same time. That they said he was shot through the heart; that he was dead. That he took part in the examination to see if there was a bullet hole in him. That there was one. That they (moved) the body and laid it on the cushion of the (car). That Mr. Norris drove Churchill's car up there. That he took the cushion out of the automobile and laid the body on it. That (he) did not move the body. That from the time Churchill had tossed these stones at the automobile, it was any way twenty minutes or more * * * before he returned.

This witness testified that they had travelled "maybe a couple of miles * * * and 5-9/10 miles North of Fairbury to the place where the fatal shooting occurred.

This same witness testified, on cross-examination, as follows:

(Abst. 8.) That he was driving on the (left-hand) track on each of the occasions when this defendant passed him or met him. That he was driving in the (left-hand track) at the (last) time when the shooting occurred; that both wagons were on the left-hand side. That the character of the right-hand track, at that place, was very rough and rutty. That the character of the (right-hand track) where they met Goff and Churchill in the afternoon,—(was good). That "on the (left-hand side) it *was good,* (the right-hand side) *was bad.* That the beaten track of the road was wide enough for two cars to pass. That, (Abst. 10) he was keeping in the left-hand track, where it was good all the time—*regardless of who came along.* That when the people in the Carter car came up behind him in the morning, they cursed him. That the women folks and Carter did, too. That he did not "say a word, only motioned for them to come around him."

That, (Abst. 12) the defendant said, God damn you, get over there and stay over there * * * then it was, then

he dashed by. That he distinctly remembers hearing him say these two things, but don't remember him saying anything else.

That when he testified that somebody said "God damn you, you want all of the road," he was before the coroner's inquest. That he doesn't remember that statement being made, unless it was him (defendant) there, he said it, I think. That the defendant did make such a remark in addition to: "God damn you, get over there and stay over there." That, (Abst. 13) it is possible that he might be mistaken * * * that he don't think he could be mistaken about the exact words the defendant used. That, even though a moment ago he couldn't remember * * * "I could only hear two or three words."

That the defendant had to go outside the (beaten track) on the left side to pass, which was pretty close up to the far side of the track; that to get by Goff's wagon, on the right side, defendant had to nearly get off the road. That after the car had passed, he stopped his team in the middle of the road and got off his wagon right away. That they had met Churchill before he had gotten off his wagon. That, "before I got off I looked to see if they stopped Churchill, and they did". That he waited to see if he was going to stop him or pull around him. That he stopped right in front of Churchill. That they stopped in front of [fol. 31] Churchill for maybe a minute. That he, Goff, had started in that direction; that he saw Churchill looking to see if there was a license; that he had got off his wagon and looked at the car, front and rear, to see if there was any license plates on it and an effort to open the hood of the car. That Churchill afterwards told him "he wanted to see if it was a stolen car." (Absts. 14-15.) That he got off on the West side of his wagon and walked to the right side of the car; that he never got it open. That then he got back on the wagon and then they pulled around him—on the right side of him, just as they had done with him. That he don't know if the road was wide enough so that they had plenty of room, nor did he know if they almost had to run into the ditch. That when they passed Churchill by he (threw) the gravel on the car, and they stopped a short distance behind the wagon. That he, Churchill, picked up a handful of gravel and threw it (overhand) just like this: (indicating). That it hit the (top) of the automobile—most on the top. That it was small pebbles, mostly (sticky, muddy

gravel); that there could have been a few stones in it. That when Churchill had thrown the mud on the car, he (Goff) said he was still coming toward Churchill, then they all jumped out of the automobile. * * * That the car had stopped "maybe fifteen or twenty feet past the wagon; that he didn't see the defendant, Carter, get out; That he heard the women call Churchill a yellow son of a bitch and a God damn white son of a bitch; that he didn't hear anything that Churchill said to them. That (Abst. 17), he don't think he did—or, he may have said something that he didn't hear. That he may have thought a lot but he didn't say anything. (Upon further questioning) Mr. Goff acknowledge that: Mr. Churchill might have said something that he didn't hear. That he was a relatively short distance from the wagon after they drove off.

This same witness was asked the following questions and he made the following answers to the questions: "Q. Did you holler to Churchill or say anything to him?" A. "I don't know whether he heard it or not. I told him I was coming up to help him out." Q. "Said it loud enough so he could hear?" A. "I don't know whether he heard it or not; I thought he was going to have to have help." Q. "Did Churchill appear to be alarmed or scared when the four women jumped out of the car?" A. "He didn't seem to be, I was not very close to him. * * *"

That he seen Percy James and Chester Clandon, who were fishing straight across from where the argument was—about a rod, or a rod and a half.

That he never saw them till he, defendant, had blew the horn of the car * * * a rod and a half or two rods North of the bridge; that the car was right up against the right side of Churchill's wagon, on the right side, when he blew the horn. That the wagons were still on the left side of the road, when the defendant pulled up on the right side of Churchill's wagon. (Abst. 19.) That when he blew his horn and Churchill stopped his team, and I stopped mine, also; that the fenders of Carter's car were even with the rear wheels of Churchill's wagon. That the fenders were about eight feet—six foot, at the very least—from the rear wheels of the wagon, which was the position of the car and wagon while the shooting occurred. That the first thing that happened was Carter said to Churchill: "What did you throw that (gravel) on my car for?" That this witness denied that he had made the following question at the

Coroner's Inquest, to-wit: Carter said to Churchill: "What did you mean by throwing that (dirt) on my car?" The witness insists that the word was (gravel), not (dirt.) [fol. 32] That the defendant asked Churchill to get off his wagon. That he (jumped) down off the wagon after Carter said that.

That this same witness was asked: "Which way did he face when he got off?" and the witness answered; in the same hostile manner: "The nigger was on the East side of the road, he was facing him. That "Churchill stepped a couple of steps away from the wagon towards the car." * * * "And the nigger (slid out from under the wheel) and took two steps sideways and fired at him." That he shot from the ground. That there was three or four steps between Carter and Churchill when he first shot. That Churchill's horses were (still at the end gate of witness's wagon.) That he had stopped his wagon right there, too; that he got off his wagon before the shots were fired * * * That he got off his wagon at the same time Churchill did. That he first seen the (revolver) drawn from his hip—from behind his hip; that he had a coat on. That Churchill had nothing on over his shirt.

In describing the defendant's actions or movements, he said: "He came out of the car with his hand back here (indicating) and drew it out, he didn't (take any sight), shot very fast." That he was behind Churchill when the first shots were fired. That he was five or six steps from Churchill—or about twelve feet away from Carter. That this witness further testified: that Churchill was about five feet, six inches tall; and that he stood six feet, two inches.

That he couldn't be sure whether Churchill came above his shoulders; that he don't know anything about his heighth. That those three shots came right after each other without any perceptible interval. That he stood there after he fired the three shots—till he, (Carter) said, "You, too!" That he started away from the scene of the crime—and Carter said: "You, too!" That he ran over to the timber, maybe a rod and a half, then he came back across the road and the car had gone. That he went up to Seymour Norris's to telephone, and they didn't have a telephone, had to go to a neighbor's.

That, as to the description given of the gun, he is positive in the flash of time it took to get the revolver out and shoot

three times and shoot once at him, he saw all those details (Abst. 22) about the gun.

The Court: "When did he put his hand back to his hip?" A. "When he put his hand on the wheel and shoved himself out—he put his hand on his hip and left it there, after he got out he brought the gun out."

CHESTER HERNDON, being first duly sworn, testified as follows:

Direct examination.

By Mr. Kerr:

This witness testified, in part, that, (Abst. 23) he lives four and one-half miles North of Fairbury; that he knows the deceased, James D. Churchill during his lifetime. That he did not know the defendant, Harice Leroy Carter, personally; that he knew where he worked. That he worked at Hanson's garage in Fairburg. That he didn't know where Carter worked on the 31st until he was told.

[fol. 33] That the witness further states: that he, too, was hauling gravel on the 31st of May from the Churchill pit; that he was hauling to the same place as Mr. Goff and James Churchill. That he was on the road the Demoss bridge goes across that afternoon. That he saw Churchill's wagon North of the Demoss bridge; that Churchill's wagon was about two or three hundred yards North of the Demoss bridge. That he was on the bridge, had stopped to rest his horses, and saw Churchill lying in the road there, but never thought anything about it • • • That he thought it was some of the boys who had got off the wagon to rest.

That he proceeded further North; that he stopped when he got there. That when he got off there, Seymour Norris and Jim's hired man pulled around me and motioned for me. That he don't remember just when Goff got back there. That Churchill was down on his knees and feet with his head in the road when he got there; that he was dead. That he walked up to see him as they pulled his shirt back; that he saw the wound "on the chest". That, that was right around (half past four) That he has lived around that part of the country seventeen years. That Churchill's body was found in Livingston County. That he helped to get a robe out of

the car, and a cushion. That he did not continue on with his load; that he left the team in the road and went away in the car. * * * In Jim Churchill's car. That he did not return back to the scene of the shooting that afternoon, but went to Forrest. That he was there when Buck Gagon was talking to him * * * at what used to be the Carmon Hotel. (That he did not come back to Pontiac that night.) That he saw the colored people in the automobile. That he saw the defendant and a woman in the car and they were going North; that they passed him going toward the Churchill wagon. That they met him coming back. That it was not a very long space of time that they passed going North that they passed him again going South * * * That he didn't drive a half a mile with his team before they returned. That he might have heard the shots but he didn't pay any attention; that there is so much shooting down that way—by hunters and fishermen and loafers. That if he had heard any shooting he would not have paid any attention. That the defendant was driving at a good gait; that he honked for me to get out of the road * * * That the defendant was driving the Chevrolet car. That they were driving at a good gait when he met them coming back; that the defendant was driving on both occasions. That he did not see the woman run down the road; that there were only two people in the car both times he saw it. That when they met him coming back they continued in a Southernly direction, and they never honked when they came back. That he was on the (wrong) side of the road both times. That we kept the smooth track, we hauled such loads we couldn't get out for the cars to pull around.

Cross-examination.

By Mr. Tuesburg:

On cross-examination, this same witness testified:

That he was about a mile from the bridge, between the gravel pit and the bridge when Carter's car passed him going North. That the team walked about three miles an hour, depending on how hot it was; that they were not walking fast then. That he hadn't got quite a half mile North when they met him coming back. That when they passed him going North, he did not pull out and give them the road. That they went around him on both occasions; that they

honked for the road several times as they passed him, going North; that they didn't say anything.

[fol. 34] That it must have been something like ten minutes from the time he met them till he reached the bridge and stopped the horses * * * to rest. That he rested his horses about two minutes, that, he then drove on down to where the body was * * * That he saw the body while he was on the bridge. That he don't remember when Goff got there, but he remembers that he was there. And the other two fellows was there. That they all got there on or about the same time.

Percy Jones, being first duly sworn, testified as follows: (Abst. 27)

Direct examination.

By Mr. Kerr:

On direct examination, this witness testified, that he lives in Bloomington, Illinois; that he is a Practicing Attorney. That he wasn't following that occupation the afternoon of May 31st., last; that he was fishing about a quarter of a mile South of the old Stockett place, where the river comes close to the road; that it is about a mile from the gravel pit. That he knew James D. Churchill during his lifetime. That he saw him hauling gravel that afternoon; that he has known James Goff since the Coroner's Inquest. That he didn't see Goff that day * * * that is, to recognize him. That there was a (number) of people hauling gravel.)

That he had seen negroes there that day. That it looked like a Chevrolet the first time he saw it; that he had parked the truck that he had brought his brother-in-law out in, in Jim Churchill's barn lot, then he walked back to where they were fishing * * * where the river hits the road * * * after he got back he happened to think that he had left the dough bait in the car (truck) and he walked back along the road * * * going North * * * to Jimmy's house. This car passed going North towards the Demoss bridge; thinks that it was in the afternoon that they hollered at him. That they were going at a pretty good lick of speed. That the next time he saw them he had come back and was fishing—probably a half hour—and then he heard the cursing, and he walked to the fence; that just as he got there they

started up the road; that they were going South on the angling road, where the road comes straight South and then makes an angle towards the South-West. That a man was driving the car, and a (nigger woman) was in front with him, and a couple were in the back seat. That they were cursing and shaking their fists * * * that he heard the following remarks: "A (yellow) son of a bitch, and a (white) son of a bitch." That those names came from the car. (It may be proper to call your attention here to the fact that the defendant, Harice Leroy Carter, is of a very light complexion—a mulatto.) That he does not know who made the latter remarks as he says: "They were *all* hollering." That Churchill was North just getting back up on his wagon.

Cross-examination.

By Mr. Tuesburg:

On cross-examination, this same witness testified as follows: That (Abst. 28-33), he had gotten out there right after dinner—probably a quarter of one. That he parked his car at Churchill's house (describing the locality of the Churchill's home, etc.). That the first time he saw Carter's [fol. 35] car he had got off of Jim's dump-board wagon and had (started) fishing, but he had forgot to take the dough bait out of the car, and it was about one hundred yards from the bend, where the road starts East, that this Carter car passed him, there; that, at that time, Carter was driving and a colored woman was in the front seat, and (two) women and a young colored boy were in the back seat. That the boy was about thirteen or fourteen years old. That he knew Livera Word by sight, and one of the Guthrie girls. That he had lived around Fairbury all of his life. That the young boy was the son of the Guthrie woman. That this first meeting of the colored people in the car on May 31st, was probably a quarter after one o'clock; that when he heard the argument between them and Churchill, after having first seen them, it must have been a half an hour or three quarters of an hour after that. That that would put it somewhere around two o'clock in the afternoon, he imagined so * * * Witness gives a clearer description of the lay of the land there with regards to the Churchill home, and the approximate distances surrounding the near vicinity of this unfortunate occur-ance—etc. (which, at this point of the witness's testimony would seem to be needless repetition.)

That (Abst. 32), he did not pay any attention to Goff's wagon; that there might have been other wagons North of where he was but he didn't notice any. That he don't remember seeing a man coming from the North towards Churchill's. That he heard some loud talking but he didn't (see who was doing it at the time it was going on.) That he heard somebody call somebody a (yellow) son of a bitch, and a (white) son of a bitch, and it sounded like colored women. That he did not recognize any white man's voice. That the voices he heard were womens'; and that he had heard Jim just as they were driving away. That after they had got through cursing him (Jim) he said: "Well, I am not a nigger, anyway." That he didn't say "God-damned nigger." That he didn't hear him say: "I am not a black son of a bitch." That he didn't see him throw anything at their car. That Chester Claudon was fishing, at that time, down the river, North of him, about nfty yards.

The Court: "Mr. James, as I understood, when you first heard this loud talking you were down on the river bank?"

Answer: "Yes."

The Court: "When you got up to the fence, the Churchill wagon was North of you?

Answer: "Yes."

The Court: "And the car started South, and was South of you?"

Answer: "Yes."

The Court: "When was it you heard those expressions, was it after you got to the fence?

Answer: "Before I got to the fence, and as I got up there they were still cursing and waving their hands.

The Court: "Both of them had started on at that time?"

Answer: "Yes."

The Court: "So that one was North of you, and the other was South of you?"

Answer: "Yes."

The Court: "Could you tell where those expressions came from, whether from the car, or where they come from?"

Answer: "The (last) ones I knew came from the car, but whether the (first) I wouldn't say."

Court: "Those expressions you mentioned, could you tell where they came from?"

Answer: "They were all cursing, practically all of the time, just continually.

[fol. 36] The Court: "You heard somebody called a (yellow) son of a bitch, and a (white) son of a bitch?"

Answer: "A great many times."

The Court: "What kind of voices?"

Answer: "Colored women."

The Court: "They used those expressions?"

Answer: "Yes."

C. J. CLANDON, being first duly sworn, testified as follows:

Direct examination.

By Mr. Kerr:

On direct examination, Mr. Clandon testified: that, he lives in Fairburg; that he has been living there forty years; almost all of his life. That his business is that of Farm Manager.

That he was fishing on the afternoon of May 31st, 1928. That the place where he was fishing was four and one half miles North of Fairburg. That he got out there between half past one and a quarter to two.

That he saw James Churchill haul his first load that afternoon; that he seen him come back again and saw him come back with the second load. That the first time he came back he hollored at him and asked him how fishing was; that he went on with his load and hollered back * * * of course he had to go to the gravel pit and load up * * * A little while later is the first he heard of the commotion in the road; that he first heard a lot of cursing; that by the time he got up there it was practically all over with.

That he was a block and a half North from where Percy James was fishing; that he judged Churchill was one hundred and fifty feet South of him, and the car South of him yet. That the State's Attorney asked him: "Did you hear any cursing?" and he said: "Just heard it." Asked: "Did you talk with James Churchill after that?" And he said: "Immediately when I got up there the (other car) was just pulling away, so that I didn't *see* anybody in the car at all. Jim pulled up along the fence and was kind of laughing about it. He said: "(Q. Don't tell what he said. I don't think the Court would allow you to.)

That he couldn't have had time to discern the make of the

car, but said it was a sedan; that he couldn't say how many people were in it.

(That he heard Percy James testify this morning. That he thinks he was off on the hour, he (James) got it confused with the first and second loads.)

That he seen a man North of Churchill walking towards Churchill, but he did not know at that time who it was because he had gotten even with him just as the car pulled away.

Cross-examination.

By Mr. Tuesburg:

[fol. 37] On Cross Examination this same witness testified: That, (Abst. 35) he was a hundred and fifty feet from Churchill's wagon after he got up there. (To the fence.) * * * That the Goff's wagon was North of him; that he hadn't the slightest idea "how far" off Goff's wagon was * * * he didn't particularly notice the wagon * * * that he noticed him running up the road. That he didn't pay much attention to his wagon; that he saw him, not knowing who he was at the time. That he should judge that he was about an eighth of a mile from the junction of the two roads, which he confirms was a slightly Northeast direction.

E. F. Law, being first duly sworn, testified as follows:

Direct examination,

By Mr. Kerr:

On direct examination, (Absts. 36-37), Mr. Law testified that he is a practicing Physician and Surgeon, practicing in Fairbury. That he had been duly licensed to practice medicine since 1903. That he knew James D. Churchill during his lifetime.

That he was called to James D. Churchill's body on the afternoon of May 31st, last. That he made an examination. That he found him lying in the road, straight North of Fairburg; and a short quarter of a mile North of the Demoss bridge. That as he recalls it, he was lying on a blanket with, he thinks, an automobile cushion supporting his shoulders and head; that his head was pointed rather to the Northeast. That he couldn't say as to whether Churchill's team was there * * * but (there were teams there.) That he

didn't look at the time, but he would say that it was about 4:20 or 4:30 when he got the call. Due to a misunderstanding, it was ten minutes to six when he finally arrived there. * * * That he made a rather superficial examination, and Churchill was dead. That he examined the chest, but did not examine the back. (That he was badly soiled with blood that night.)

That the next day he examined the body, and there was a wound in the left chest, about two inches inside the nipple line, between the fourth and fifth ribs; and it evidently went completely through the chest, coming out on the right side between the seventh and eighth ribs about four inches from the spinal column. (That he wouldn't go down on record as saying that the bullet penetrated the heart) as no post mortem was made, but he is quite sure that it did. That such a wound would cause death. That he thinks it would cause instant death.

Cross-examination.

By Mr. Tuesburg:

On cross-examination this same witness testified: that he wouldn't care to state definitely how close they were together when the shot was fired; that there appeared to be no powder burns. That he could not determine what calibre of gun it was; that he is not familiar with calibres of guns; that he never owned a gun; that it was a fairly good-sized gun. That the wound was more lacerated where it came out than where it went in.

L. M. Shugart, being first duly sworn, testified as follows:

[fol. 38] Direct examination.

By Mr. Kerr:

On direct examination, Mr. Shugart testified that, (Absts. 38-42), he had been sheriff of Livingston County from 1922 to 1926; that he also was acting sheriff of said county from along the middle of May until the first week in June, 1928. That he was acting sheriff and a deputy sheriff on the 31st day of May, last. That he remembered the occasion of the killing of James D. Churchill.

That the defendant, Harice Leroy Carter was (given over) into his custody the evening of May 31st, 1928. That he is in Court; that he knows the defendant to be around thirty-two years old.

That he remembers having a conversation with several people and the defendant on the evening of May 31st, at the County Jail, in which he was put. That the State's Attorney, Neil Kerr, Assistant State's Attorney, Burnell Phillips, William A. Patterson, Chief of Police, Clarence Hartley, Deputy Sheriff, himself and the defendant were present.

(Mr. Tuesburg objects to the present witness telling the Court where it happened and the hours and what was said, and by whom — as being incompetent "unless the (defendant) testifies.)

The Court: "He may answer."

Witness: "Around 8:30 P. M. the State's Attorney, Neil Kerr, and himself and Mr. Patterson and Clarence Hartley and Mr. Phillips held a conversation in the County Jail in Pontiac, regarding the shooting of James D. Churchill. The conversation was about where he was during the day; whether or not he had committed the shooting of James D. Churchill; and at that time Carter told the story that he had been sleeping in the afternoon at the residence where he stayed. We asked him if he had driven Livera Word's automobile that day. He said: 'No.' He said he had had it that morning, took it to Hanson's garage and had it greased; then took it back, and after that he had gone to his room and gone to bed because he worked nights in a restaurant in Forrest. We asked him if he hadn't been fishing with some colored ladies that day, and he said: 'No.' We asked him if he hadn't driven Livera Word's car out to where they were fishing, and again he said 'No.' We talked quite a while along that line, and he insisted that he had been in Fairburg, sleeping.

"That, Livera Word came in before Carter, and we asked her to tell the story she had told them previously; then she related the story that they had gone fishing in the afternoon of May 31st, in company with her sister, Ella W. Henderson, Florence Caldwell and a girl 'called Lorene McDaniels'.

"That they had gone North of Fairburg to the Demoss bridge, out in that neighborhood where they had been

fishing; later they returned to Fairburg (along later in the afternoon.) As they were going South into Fairburg, at a point just North of the road that runs to the gravel pit, they had met a couple of wagons with some white boys hauling gravel; and the boys were on the wrong side of the road, and they had some conversation about them being on the wrong side of the road. But finally they had continued their trip into Fairburg, and after they arrived there, Lorene McDaniels, Ella Henderson and Florence Caldwell had gotten out of the car, and that Livera Word, herself, the defendant had gone back [fol. 39] to the Demoss bridge and had crossed the bridge, where they came up behind these same two wagons again; that they stopped their car at a point just about even with the rear wagon, and they both got out of the car. Both she and the defendant. We asked her if she heard any shooting and she said 'No.' That was all of that conversation and was made in the presence of Carter." Witness said that "We took Livera Word out of the place where we had been talking. I asked the defendant if that story was true and he didn't have anything to say at that time. Mr. Kerr and myself started out, and Carter called to Mr. Hartley and told him that he wanted to see us, and we went back into the jail and he told us the story."

This State witness continued his story, as follows: (On direct examination): That "at that time we went back in; after he had sent for us; that Mr. Patterson, Neil Kerr, Burnell Phillips, Clarence Hartley and myself and the defendant . . . ."

The Court: "Was there any record of this talk made, any stenographer present?"

Witness: "No, nothing more than pencil notations I may have made."

Mr. Kerr: "Go ahead."

Witness: "Mr. Kerr told him he had been told by Mr. Hartley that he wanted to tell the story and Carter wanted to know (what the consequences might be if he did tell the story.) Mr. Kerr informed him that the punishment could be life in the penitentiary, or that it might be death in the electric chair; and that anything he said must be said voluntarily. He said he was not afraid of life in the penitentiary, but he didn't like to talk about the chair. Mr. Kerr said that he was making him no promises whatsoever; that if he still wanted to

tell the story he could tell it in the presence of the men who were there."

Mr. Kerr: "Go ahead."

Witness: "And he answered the questions we asked him about how he had gone fishing. He told the story about the same as Livera Word had told it; they had gone fishing and on their return trip met with the boys who were hauling gravel, and there was some discussion about them being on the wrong side of the road; and that they continued their trip into Fairburg where the three girls (colored ladies) got out; and he said he had gotten out and got a drink, and Livera Word had got a drink, and he had gone to the toilet and when he came back he got in the car and there was a gun lying on the front seat of the car. He went on with his story that he and Livera Word drove back to the point North of the Demoss bridge, and that these two wagons were (very close) together. They asked these white boys what they meant by throwing gravel at their car, and they got off the wagon, and Carter shot the fellow. We asked him if he knew who the man was, and he said 'No.' We asked him if he could describe the man, which he did. He described the man he had shot as having on a red shirt and khaki pants, and another fellow as having on blue overalls and a straw hat. He said this second man had ran into the timber after the shooting. He said the car was turned around, and he and Livera Word returned to Fairburg. That after he got there he drove the car [fol. 40] into the garage in Fairburg, and that he was working in Forrest. That he went over to the house where he stayed, and then went up to Hanson's garage where he got a man to drive him to Forrest. In the first part of his story he said the gun was in the car all day, and that it was his own gun. We asked him where he got it, and he said he bought it from a fellow in Kansas about a year and a half ago. He gave us the name of the fellow, but I have forgot. He said it was a blue-steel Colt Special. Belonged to him. We asked him what he did with the gun, and he said that he threw it in the river as he drove over the bridge after shooting the fellow.

Cross-examination.

By Mr. Tuesburg:

On cross examination this same State's witness testified (Absts. 42-44): That when the defendant, Carter, was telling him about the conversation in regard to the team being on the wrong side of the road * * * he did not go into details as to what was said * * * "nothing more than that they were on the wrong side of the road; and that there was some discussion and some cursing (back and forth):" That the defendant had said: "he, the white boys, cussed him; that he didn't do any cussing, but the women did."

That when the defendant was telling him about going back and crossing the Demoss bridge, and coming up to the wagon, and stopping just before the shooting, that he *didn't* tell him anything about anything being said by any of the parties.

The Court: "Are you familiar with that locality out there?"

Witness: "Quite so."

The Court: "Do you know where the Churchill gravel pit is?"

Witness: "Yes."

The Court: "There is a road comes in from the West and ends at the North-and-South road?"

Witness: "It comes in at a jog, at a 'T'-point."

The Court: "The Churchill gravel pit is near the corner, that comes in from the West but doesn't proceed on West. Is that right?"

Witness: "Yes."

Mr. Tuesburg, (continuing on cross examination of the same witness): That the defendant had told him several stories about this gun; that he had checked up on these stories and found them partly untrue. That several days elapsed while the defendant was telling these stories, (Abst. 43.) and he told a different story on different days.

That when he last mentioned that the defendant said he had went in and got a drink, he didn't say it was water; that he presumed it was that, or that that is the way he understood it. That this confession was made without any [fol. 41] promises or offers of any kind; that the defendant was informed by the State's Attorney that if he talked

it was purely voluntarily; that the defendant wanted to know what might happen if he would say that "he had done the shooting," and the State's Attorney told him "if the story checked up he might get from fourteen years to life in the Penitentiary," and he "might be sent to the electric chair." That that confession was made at the County Jail in Pontiac, "at 8:55 on the night of May 31, 1928."

W. A. PATTERSON, being first duly sworn, testified as follows:

Direct examination.

By Mr. Kerr:

On direct examination, Mr. Patterson testified: that he is Chief of Police, and also holds a commission out of the Sheriff's office; that he has had it about thirty (30) years. That he was sheriff from 1910 to 1914. That he was a deputy sheriff on the 31st day of May, 1938; that he was present at a conversation "wherein the defendant and several other parties were present." That Neil Kerr, the State's Attorney, the Assistant State's Attorney, Mr. Phillips, Deputy Sheriff Shugart, Clarence Hartley and himself were there.

This witness was asked by Mr. Kerr to tell just what took place between the several parties there. He stated: "*We all went in the cell and got him out in the pen,* AND then went to talking to him; about his first remark was "what would be the consequences" providing he told them what was done. That the State's Attorney, Mr. Kerr, at that time explained to him the conditions of the crime and the various punishments he might get; that he might get the electric chair and he might get fourteen years to life in the Penitentiary; that there were no promises made by anyone; that under these conditions, he went on and admitted that he had shot the man.

This witness further stated that the defendant, Harice Leroy Carter, said that he and four women were out in the afternoon, fishing; that when he got ready to drive home they got in the car, down South of the Demoss bridge; that he came upon a couple of teams hauling gravel; the teams held the road; that they had to get out a little farther than

what they thought was right; that (Abst. 45.) they got into an argument and quite a number of words took place. Finally they left and drove on into Fairburg. Later on, the defendant and Livera Word came back and met the two teams North of the Demoss bridge, about forty or fifty rods; that they got into another argument; that the defendant said they got to talking and asked Churchill: "Why he didn't give them the road?" And "Why he threw rocks at the car?" That the defendant said: "One word fecthed on another, and Churchill got off his wagon, and he got out of the car; and Churchill put his hand up as though he was going into his shirt for a gun, and then was when he pulled and shot him three times." That Livera Word started running down the road; that he turned the car around and picked her up and drove back to town.

That the defendant further said, in his presence in the County Jail, on the night of May 31st, 1928, that he "threw the gun in the river as they were crossing the bridge." [fol. 42] That "We gave him a 'Hearing' about three o'clock in the morning; that on their way to Bloomington, *(See petitioner's personal notes, Pages 10-11 of Brief & Argument.)* as they sat in the back seat of the car, he got to talking with the defendant and asked him who the gun belonged to, and he "refused to tell." That the defendant finally said: "When they got back in the car, the second time," that "the gun was lying on the seat wrapped up in newspaper, and that as he got out of the car he picked it up off the seat, still wrapped in newspaper, and put it under his arm." That he told him that on his "way to Bloomington."

That (this morning) he admitted a different story, entirely: that the gun was put on the seat while he was getting a drink * * * that he said he stuck it down the "left side" of his trousers, back of his belt. That he asked the defendant if he owned a gun of his own, and he said: "No." That the defendant told us, in the presence of Shugart, and the rest of us, that "he bought it (the gun) from a fellow in Kansas; that he also said he did not know the make of the gun; that he had never looked at it to see, and never had it in his hands before that day.

On cross-examination.

By Mr. Tuesburg:

This same witness testified, (Abst. 46.) that the defendant had told him two different stories.

That he had heard Mr. Shugart testify, but "his testimony is not the same as that" * * * That "this is what he had told him, this morning." —i. e. May 18th, 1928). That the defendant also told the latter story, and that he told that to Mr. Kerr and Mr. Shugart. That there have been three stories that he has heard.

People rest.

Ella Henderson being first duly sworn, testified as follows:

Direct examination.

By Mr. Tuesburg:

Ella Henderson called as a witness on behalf of the defense, testified as follows: That she lives at 600 West Ash Street, Fairburg, Illinois; that she knows the defendant, Harice Leroy Carter, and that the co-indicted Livera Word is her sister. That she was one of the four women who went out to the Demoss bridge on the 31st of May, 1928, with the defendant. That there was Leroy Carter and her sister in the front seat, and Lorene McDaniles and Florence Caldwell and herself in the back seat.

That, "as well as she can remember, it was about twenty minutes to three * * * when they started back to Fairburg."

That on their way back to Fairburg they met some men hauling gravel. That she had met James Goff, but she did not "know him." That they had met a wagon driven by James Goff.

That the first wagon was driven along "in the middle of the road." We stopped and he "gee-ed his horses a little in the road. We didn't say anything. Harice Leroy Carter drove around him; almost tipped us in the ditch. That he [fol. 43] drove the car around the right side—West side of the road—of the wagon. That they met another wagon a little farther down the road. That she did not know this man. That when they met that wagon, it was a little farther

over in the right of way than the first wagon, and the first thing the man stood up on his wagon and said: "Drive around." He, (the defendant) Carter, said: "I won't do it; I have the right of way." This man—James D. Churchill—got out of his wagon and looked at the car, then said: "Where is your license number? I will rock your God-damned car." He walked back of the car and picked up some rocks and threw one. He walked a little farther, and hit the car again. Then he went and got on his wagon and threw some more stones. Kept calling us names. My sister climbed out on the right-hand side of the road and walked back; and they both called names." That she heard them very distinctly. The second man (James Goff) called us "God-damned dirty niggers * * * Sons of bitches." And then he began: "You God damn niggers—" My sister said: "You black-hearted bastard."

The Court: "Who said that?"

Witness: "Livera."

That she cannot tell anything else that was said by Churchill, or anyone else.

That they then drove on; that he threw another rock, after we started.

Cross-examination.

By Mr. Kerr:

On cross examination this same witness testified: that Mr. Churchill swore at them, and then Livera swore at them. (Him.) That she did not hear anybody else do any cursing. That she did not hear her sister, Guthrie, swear. That she didn't shake her fist out of the car; that she didn't take any part in the argument. That she did not get out of the car until she got home. That it was true that there were no license plates on the car. That after they left Churchill, there in the road, she went on to Fairburg; that she went home.

That she thinks Florence Caldwell went over next door, to her sister's, to change clothes, and dress; and Lorene went over to the place where she stayed. That Livera and Carter both stayed in the car, while she was there. That she does not know what time it was in the afternoon; that along around four o'clock would be a pretty good guess, she thinks.

That she didn't recognize either of the men who were on the wagons. That she had, she thinks, worked for the Churchill family, in 1906. That she had since lived in Danville, for about four years.

That she had said at the Coroner's Inquest, as well as on direct examination by Mr. Tuesburg, that when they passed the Goff wagon that "there wasn't anybody said anything." That he, Goff, did "gee" his horses, but the second man did not.

That when Churchill asked where the license plates were, he, Carter, said: "It's none of his damned business." That when Carter said that, Churchill said: "By God, I am going to rock your damned car." That Churchill "rocked" the car and kept on rocking it.

[fol. 44] (50) That when he was standing on the ground he went into the ditch and got the rocks. "He had gotten on the wagon" when he threw the stones the second and third times . . . that he continued to throw rocks as long as he thought he could hit the car.

(Interruption.)

Mr. Tuesburg: "Do you know why there were no license plates on the car?

Witness: "For one reason, they hadn't come yet."

Mr. Tuesburg: "How long had your sister had the car?"

Witness: "She got it the 22nd day of May."

Mr. Tuesburg: "She had sent for the license plates?"

Witness: "Yes."

Mr. Tuesburg: "And they hadn't come?"

Witness: "No."

The Court: "Was it a new car?"

Witness: "I don't think so; a second-hand car."

Florence Caldwell, being first duly sworn, testified as follows:

Direct examination.

By Mr. Tuesburg:

Florence Caldwell, called as a witness on behalf of the defense, testified as follows:

That (Abst. 50-51), she lives in Chicago. That she was visiting Fairburg on the 31st of May, 1928. That she went

out to the Demoss bridge with the defendant, Carter, and Livera Word and Ella Henderson and Lorene McDaniels, on that date. That it was 3:30 when they started back. That she remembers the circumstances of meeting two wagons loaded with gravel. That they just drove on by the first wagon; that when they came to the second wagon—"Each demanded the right of way, etc." Nothing was said when we passed the first wagon. The teamster and the driver of the car had these words. Next, the teamster got off his wagon; that the latter said he had the right of way because "he was working on the road." That he then started swearing and throwing rocks. That the teamster called Roy "A black son-of-a-bitch." That the only thing this witness heard Carter say to the teamster—when he demanded to know where his license plates were—was: "It is none of your damned business." That she saw the teamster walk around the car, to the back. It was then that he asked: "What is your number, or where is your license, or something." That she heard the teamster and Livera Word quarrelling; that she got out of the car. That she called him "A black bastard"; that she couldn't hear what the teamster said in reply—as he was farther away from her than Livera Word was.

Cross-examination.

By Mr. Kerr:

[fol. 45] On cross examination, this same witness, Florence Caldwell, testified as follows: That she saw the teamster throw one stone, and then he got back on his wagon and threw some more; that he also threw a handful of gravel after he had gotten back on his wagon, but the first stone he threw from the ground.

That beside the swearing of Livera, she heard the boy call Roy "A black son of a bitch." That none of the other women did any swearing. That she don't remember making a statement at the Coroner's Inquest, to the effect that "Sis Guthrie swore at the teamster. That she really was so excited that she don't remember half of it."

LORENE MCDANIELS, being first duly sworn, testified as follows:

Direct examination.

By Mr. Tuesburg:

Lorene McDaniels, called as a witness on behalf of the defense, testified as follows: That she lives in Fairburg; that she remembers the circumstances of going out to the bridge North of Fairburg on the 31st day of May, 1928, with Florence Caldwell, Livera Word, Ella Henderson and the defendant (Harice Leroy Carter). That, as well as she can remember, they started back to Fairburg "about three o'clock." That she remembers meeting two wagons loaded with gravel, a mile or so South of the bridge. That when they met the first wagon he never said anything; that "they drove in the ditch, to get by."

That, "When they met the second wagon, Carter honked his horn for him to get on "his side of the road"; but he didn't move. Carter stopped the car and this fellow stopped his horses, and he got down off the wagon; that he wanted to know where their license was. Carter said it was "none of his damned business," and told him to get out of the road; and the teamster said he would "rock" the car, and picked up some rocks and threw them. Finally got up on his wagon and threw some more rocks, once he was up there.

Cross-examination.

By Mr. Kerr:

On cross-examination this witness testified as follows: That the teamster picked up "pieces of rock" out of the road, and threw them three times. That she did not say anything; that she never got out of the car; that she never swore at all, nor did she shake her fist out of the car window.

Mr. Tuesburg: "Defendant offers for consideration in this case (alone) the testimony of Livera Word, at the Coroner's Inquest.

The Court: "Admitted." (Abst. 54.)

Defendant Rests.

[fol. 46] S. M. SHUGART, Recalled.

Direct examination.

By Mr. Kerr:

The Court: "You are the same L. M. Shugart that testified this morning?"

Witness: "Yes."

The Court: "Are you acquainted with Livera Word's Chevrolet sedan?"

Witness: "Yes."

The Court: "Did you make an examination of that Chevrolet shortly (after) the 31st day of May?"

Witness: "I did, Sir."

The Court: "When?"

Witness: "The next morning."

The Court: "With a view to ascertaining whether—(were)—any dents in it which could have been caused by (bricks), 'miss-les' or rocks?"

Witness: "Yes."

The Court: "What was the result of your examination?"

Witness: "I found it had no dents in it on the top or back, but the top of the automobile, the back glass, and below the glass had been wiped off, and there was like water from yellow clay on the top and on the back glass."——

Mr. Tuesburg: "How much surface did the part that had been wiped off cover?"

Witness: "It would take about up to the middle of the top, and down to the top, the extra spare tire on the back."

Mr. Tuesburg: "The rear of the car had been wiped off?"

Witness: "Yes."

Mr. Tuesburg: "And it looked like yellow clay where it had been done?"

Witness: "Yes."

Mr. Tuesburg: "The whole back of the car was smeared in the same way?"

Witness: "It looked (it) like yellow clay, or yellow water clay stain."

[fol. 47] Certificate of Transcript of the Testimony taken in the case of:

"People of the State of Illinois

vs.

Harice Leroy Carter, etc., Number 3536

In the Circuit Court of Livingston County, Illinois, before the Honorable Stevens R. Baker, Presiding Judge, et. al., on the 18th day of September, A. D. 1928; that the same is a true and correct copy of the said cause to determine the sentence of the defendant on his plea of guilty, etc. * * *"

Signed by Marjorie Swanson.

Subscribed by Roy C. Hamman, Notary Public, Livingston County, Illinois. September 2, 1944.

[fol. 48] In Supreme Court of Illinois

Petition for Writ of Error

Now comes the Plaintiff in Error, Harice Leroy Carter, etc., and personally represents unto this Honorable Court that these are the following facts and points of authorities in support of his contentions, at this belated date, and within the twenty-year limit as required by the statutes of this State to file writ of error in all criminal cases, as from the Common Law Record. And he does pray this Court to thoroughly review the whole of the record, annexed hereto, in determining whether accused has been properly tried, convicted and sentenced; and whether said accused, Plaintiff in Error, has had a fair trial; and lastly, whether counsel assigned to this case failed to protect defendant's rights—where the Trial Court permitted the District Attorney to take advantage of the defendant because he was poorly represented.

Plaintiff in Error Presents:

1. The Court errored in that it did not appoint an attorney in time to properly aid the defendant during arraignment when accused needed such counsel.

2. Rights of accused in Criminal Prosecution.

Defendant was deprived of due process of law by "abuse of process."

Where defendant was taken in to custody by sheriffs, Chief of Police, State's Attorney and Assistant State's Attorney, and for fourteen or more days after seizure, during which period he was held incommunicado, under secret inquisition, relays of officers, experienced investigators, and from beginning at 6:30 Thursday evening until about 1 A. M. Friday morning, defendant denied that he had anything to do with the killing of Churchill; defendant was carried to another County of the State, Bloomington, Illinois, as a result of mob violence, and on Monday night he was brought back to the County from whence he was recently removed, and lodged in a second-floor cell in the County Jail at Livingston, Illinois; held incommunicado there until the 15th of June, 1928, under said secrect inquisitorial methods and such holding of the accused incommunicado by said officers, in manner aforesaid, constituted "abuse of process"; and, therefore, if any such admissions to State officers were made and submitted as evidence against defendant, they were Not voluntary, and was a denial of "due process of law."

3. Reviewing Court determines whether accused has had a fair trial, and whether conviction is based upon competent evidence, establishing guilt beyond reasonable doubt.

Wherefore, Plaintiff in Error prays Judgment in this Honorable Court (Supreme) of the State of Illinois reversing said cause—at this belated date—on question of lack of competent counsel. And, further, respectfully prays that this Honorable Court will thoroughly review the whole of the records attached hereto, and hereinafter annexed as: Exhibits "A", "B" and "C": and any and all such other records relating to this particular cause as may otherwise remain upon the files of the Clerk of the Circuit Court of Livingston County, Pontiac, Illinois; and that said Clerk be required to furnish a full and true and certified copy of the whole of the records of this cause, No. 3536, should this Court deem it necessary in determining whether the defendant was given a fair and impartial trial.

Respectfully submitted by Harice Leroy Carter,
Plaintiff in Error, Attorney, Pro Se.

[fol. 49] *Duly sworn to by Harice Leroy Carter. Jurat omitted in printing.*

[fols. 50-51] IN SUPREME COURT OF ILLINOIS

No. 28625

PEOPLE STATE OF ILLINOIS, Defendant in Error,

vs.

H. LEROY CARTER, Plaintiff in Error

Error, Circuit Court, Livingston County

ORDER OF SUBMISSION—September 17, 1945

Now on this day come the parties hereto and this being one of the days set apart for the call of the docket under the rules of this Court, and it appearing to the Court that plaintiff in error hath filed herein a duly certified transcript of the record and proceedings of the Court below, together with printed abstracts thereof, and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs, and the said defendant in error having entered motion to affirm said judgment and for costs and procedendo, and said motions being taken under advisement for final hearing, and the Clerk of this Court reporting that said cause is now ready to be taken, and said cause is here submitted for the consideration and judgment of the Court:

Therefore it is ordered by the Court that this cause be and the same is hereby taken under advisement.

[fol. 52] IN SUPREME COURT OF ILLINOIS

Docket No. 28625—Agenda 3—September, 1945

THE PEOPLE OF THE STATE OF ILLINOIS, Defendant in Error,

v.

HARICE LEROY CARTER, Plaintiff in Error

OPINION—Filed November 21, 1945

MR. JUSTICE STONE delivered the opinion of the court:

This is a review on writ of error sued out by plaintiff in error *pro se*, seeking reversal of a judgment of the circuit court of Livingston county sentencing him to the peni-

tentiary for 99 years on a charge of murder and his plea of guilty thereon. No bill of exceptions has been filed. The only questions, therefore, that this court can consider are those on the common-law record.

His first contention is that the court erred in not appointing an attorney to represent him during arraignment. The right to be represented by counsel is one which the defendant may waive or claim, as he shall determine. No duty rests upon the court to provide legal assistance for an accused, unless he states, under his oath, his inability to procure counsel, and expresses a desire to have the court appoint one for him. (*People* v. *Braner*, 389 Ill. 190; *People* v. *Corrie*, 387 Ill. 587; *People* v. *Childers*, 386 Ill. 312.) There being no bill of exceptions, and it not appearing that plaintiff in error sought to have an attorney appointed for him, this assignment of error cannot be sustained. *People* v. *Stubblefield*, No. 29048; *People* v. *Stack*, No. 28738; *People* v. *Braner*, 389 Ill. 190.

Others errors assigned relate to his complaint that he was deprived of due process of law by reason of the method of his arrest and that he did not have a fair trial based upon competent evidence. There is no basis in the common-law record on which the court can review such questions. Therefore they cannot be considered. *People* v. *Lantz*, 387 Ill. 72; *People* v. *Bertrand*, 385 Ill. 289; *People* v. *Keller*, 353 Ill. 411.

The judgment of the circuit court of Livingston county is affirmed.

Judgment affirmed.

[fol. 53] IN SUPREME COURT OF ILLINOIS

No. 28625

PEOPLE, STATE OF ILLINOIS, Defendant in Error,

vs.

H. LEROY CARTER, Plaintiff in Error

Error to Circuit Court, Livingston County, 3536

JUDGMENT—November 21, 1945

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as

matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

Therefore, it is considered by the Court that the judgment of the Circuit Court of Livingston County aforesaid, Be Affirmed in All Things and Stand in Full Force and Effect, notwithstanding the said matter and things therein assigned for error.

I, Earle Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said court this 7th day of December, 1945.

(S.) Earle Benjamin Searcy, Clerk Supreme Court of the State of Illinois. (Seal.)

[fol. 54] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 55] SUPREME COURT OF THE UNITED STATES

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS—May 6, 1946

On Consideration of the motion for leave to proceed *in forma pauperis* herein,

It Is Ordered by this Court that the said motion be, and the same is hereby, granted.

Mr. Justice Jackson took no part in the consideration or decision of this motion.

[fol. 56] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 6, 1946

The petition herein for a writ of certiorari to the Supreme Court of the State of Illinois is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration or decision of this application.

Endorsed on cover: In forma pauperis. Enter Petitioner pro se. File No. 50,467, Illinois Supreme Court. Term No. 764. Harice LeRoy Carter, Petitioner, vs. The People of the State of Illinois. Petition for writ of certiorari. Filed January 21, 1946. Term No. 764 O. T. 1945.